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10/534,650	05/12/2005	Darren Mckerrecher	056291-5259	6547

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EXAMINER

MORRIS, PATRICIA L

ART UNIT	PAPER NUMBER
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1625

MAIL DATE	DELIVERY MODE
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08/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claims 1-8 are under consideration in this application.

Claims 9 -12 remain held withdrawn from consideration as being drawn to nonelected subject matter. 37 CFR 1.142(b).

Election/Restrictions

The requirement is still deemed sound and proper and is therefore made **FINAL**.

Again, this application has been examined to the extent readable on the elected compounds wherein Ar represents a pyridine 2-yl group, R³, R⁵ and R⁶ represent nonheterocyclic groups, exclusively. All additional heterocycles pertain to nonelected subject matter.

Rejoinder cannot be offered at this time because applicants have introduced new rejections under 35 U.S.C 112. Applicants are reminded that process claims that depend from or otherwise include all the limitations of the patentable product will be entered as a matter of right if the amendment is *presented prior to final rejection or allowance, whichever is earlier*.

Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

. Claims 10-12 are drawn to intermediates and are **not** subject to rejoinder.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. **Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112.** Claim 14 does not meet the requirements of 35 U.S.C 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement

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Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Claims 10-12 are drawn to intermediates and are **not subject to rejoinder**.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In view of applicants' amendments to claim 1 deleting the non-elected compounds, claims 5 and 6 lack antecedent basis for the heterocycles recited in the claims.

Allowable Subject Matter

Claims 1-4, 7 and 8 are allowed.

Claims 5 and 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Morris whose telephone number is (571) 272-0688. The examiner can normally be reached on Mondays through Fridays.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Patricia L. Morris/
Primary Examiner, Art Unit 1625

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August 3, 2009